

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8330 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

-----  
VASHRAMBHAI K PATEL

Versus

STATE OF GUJARAT

-----  
Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR ND GOHIL, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1  
MR BHARAT T RAO for Respondent No. 4

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/03/99

ORAL JUDGEMENT

Grievance of the petitioner in this writ petition under Article 226 of the Constitution of India is that he has been illegally detained under the orders of the District Magistrate, Rajkot dated 9.9.1998 passed under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 and has prayed for quashing of the said order and has also prayed that he be immediately released from illegal detention.

From the grounds of detention, it appears that at the time of surprise inspection of petitioner's Sanjay Oil Mill Company manufacturing edible oil, it was found by the District Supply Officer, Rajkot that the petitioner was keeping adulterated groundnut oil. Adulteration was with mustard oil, a commodity which was available on the relevant date at cheaper rate. The allegation against the petitioner was that he was selling adulterated groundnut oil mixed with the low priced mustard oil in the name of pure groundnut oil and was earning huge profit by indulging in blackmarketing activity. The other irregularity in maintenance of stock register etc. was also found. Alternative remedies were considered and ultimately the Detaining Authority was subjectively satisfied that with a view to immediately preventing the petitioner from committing such illegal activities, preventive detention was the only efficacious remedy. Accordingly, the impugned order was passed.

The impugned order has been challenged in the course of arguments by learned Counsel for the petitioner on four grounds.

One of the grounds has been non supply of material documents viz. order passed in the year 1995 against the partner of the petitioner and copies of those documents were not supplied to the petitioner which has prejudiced his valuable right of making effective representation. I do not find any substance in this ground of attack. It is not for this Court to advise the Detaining Authority as to how the grounds of detention are to be formulated and what material is to be referred in the grounds of detention. If the Detaining Authority refers in the grounds of detention altogether irrelevant material, it is not obligatory under the law that those irrelevant materials should also be supplied to the detenu. It is only basic material on which the grounds of detention were formulated that their copies were required to be furnished to the petitioner. Basic material and documents in this case were in relation to the activity which was found prejudicial at the time of surprise inspection on 29.8.1998. Any reference of previous action against the partners of the petitioner in the year 1995 was wholly irrelevant and the detention was not based on that ground. Consequently, non supply of

copies of those documents has not vitiated the detention order.

Another contention has been that the Central Government had not expeditiously dealt with the representation of the detenu as well as the representation sent by his son. This contention is also without substance. Two affidavits have been filed by the Central Government, one affidavit from Jatinderbir Singh, Director, Department of Consumer, Ministry of Food and Consumer Affairs, New Delhi and the other from A.L.Makhijani, Under Secretary, Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi. If these affidavits are read together there is sufficient explanation of the so called delay in disposal of representations by the Central Government. Two representations dated 15.9.1998 made by the Advocate of the detenu and another representation dated 17.9.1998 made by the son of the detenu were received in the concerned section on 21.9.1998. The learned Counsel for the petitioner has challenged the correctness of this statement by stating that the representations were received by the Central Government on 16.9.1998 and 19.9.1998 respectively. In the counter affidavit of Shri A.L.Makhijani, it is mentioned and deposed that the representation was received in the concerned section on 21.9.1998. Initially, the representation was received in the Receipt & Issue section of the department on 16.9.1998, and another representation dated 17.9.1998 was also received in concerned section on 21.9.1998. The representations received first go to Receipt & Issue section and from there the representations are processed and sent to the concerned section dealing with such representations. As such, the time between 16.9.1998 to 21.9.1998 stands explained and it cannot be said that there was delay on this score. It is further deposed that 19th September and 20th September, 1998 were holidays on account of Saturday and Sunday. Consequently, the representations were taken up 21.9.1998 and were rejected on 23.10.1998. It was thus a case of expeditious disposal of representation and the Central Government cannot be blamed for dealing with disposal of the representations. This ground has also no substance.

Delay between 21.9.1998 to 23.10.1998 on the part of the Central Government is not due to any lethargy on the part of the Central Government but due to lethargy on the part of the State Government. In the counter affidavit of Shri Jatinderbir Singh, it is mentioned that

telegram dated 21.9.1998 was sent to the State Government requesting for parawise comments. Parawise comments were received from the State Government by Central Government on 28.10.1998. This delay between 21.9.1998 to 28.10.1998 has not been explained by the State Government. Again sitting over the telegram of the Central Government and sending parawise comments leisurely by the State Government few days before completion of one month can certainly be attributed to the hopeless lethargy on the part of the State Government and it is on this count some delay occurred on the part of the Central Government in deciding the representations. Thus, it is the State Government which is squarely responsible for this delay and this lethargy has rendered the detention and continued detention illegal.

Another lethargy and inaction of the State Government is to be noticed with reference to second representation dated 17.9.1998 sent by the son of the detenu. Annexure "F" is the copy of the representation. Though it was the second representation in the sense that first representation was sent on 15.9.1998 it cannot be said to be successive representation in as much as from Annexure "F", it transpires that additional grounds for revocation of detention order were taken by the son of the detenu. In the initial affidavit of the Detaining Authority a vague reply has been given in para 14 without specifying as to when the representation dated 17.9.1998 was received by him and when it was disposed of and whether it was allowed or rejected. What is deposed in para 14 is that this representation was received, perused and was considered and also replied to the detenu. The vagueness in this para was never attempted to be supplemented in the additional counter affidavit dated 1.3.1999. Additional information given in this additional affidavit is regarding disposal of first representation dated 15.9.1998 on 16.9.1998. However, learned Assistant Government Pleader from the record pointed out that the second representation dated 17.9.1998 was received on 21.9.1998. 26th and 27th September were holidays. From the receipt section, it was received by the authority concerned on 28.9.1997. The delay between 21.9.1998 to 26.9.1998 has not been explained. It is note worthy that detention order dated 9.9.1998 was approved by the State Government on 19.9.1998. The representation of the son of the detenu dated 17.9.1998 was rejected by the Detaining Authority on 29.9.1998 when he had lost his jurisdiction to consider the representation in as much as the detention

order passed by him already stood approved by the State Government on 19.9.1998. It is thus clear that instead of forwarding the second representation to the State Government, the Detaining Authority himself rejected it which amounts to nonconsideration of the second representation by the competent authority viz. the State Government. This action of the Detaining Authority has consequently invalidated the detention order as well as continued detention of the detenu.

For the reasons stated above the impugned order of detention cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 9.9.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt